

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

In re MASSEY ENERGY CO. SECURITIES
LITIGATION

CIVIL ACTION NO. 5:10-cv-00689

**DEFENDANTS' JOINT OBJECTION TO THE UNITED STATES OF AMERICA AND
PLAINTIFFS' [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO
PARTIALLY LIFT THE PSLRA DISCOVERY STAY**

Defendants James B. Crawford, E. Gordon Gee, Robert H. Foglesong, Richard M. Gabrys, Lady Barbara Thomas Judge, Dan R. Moore, Stanley C. Suboleski, Don L. Blankenship, Baxter F. Phillips, Jr., Eric B. Tolbert, J. Christopher Adkins and Massey Energy Company (collectively, the “Defendants”) respectfully submit this joint objection to the [Proposed] Order Granting Plaintiffs’ Motion to Partially Lift the PSLRA Discovery Stay (the “Proposed Order”) submitted by the United States of America (the “Government”).

In its Reply Memorandum in Support of its Combined Motions to Intervene and to Stay Discovery (the “Reply”), the Government states that it “and the plaintiffs have reached an agreement regarding the United States of America’s Combined Motions To Intervene And To Stay Discovery”, the terms of which are “embodied” in the Proposed Order. The Proposed Order would grant Lead Plaintiff Commonwealth of Massachusetts Pension Reserves Investment Trust and Plaintiff David Wagner’s (together, the “Plaintiffs”) Motion for Partial Lift of the PSLRA Discovery Stay (the “Motion”) and order the production of documents “concerning the safety of all Massey mines that Massey has produced to, or will produce to, any private litigants and any regulatory, governmental, or investigative agencies located in the United States that are investigating the safety of Massey’s mines”, except that Massey would be prohibited from producing certain categories of documents that were produced in connection with or that relate to the Government’s criminal investigations. (Proposed Order at 1-3.) Although the Proposed Order would grant Plaintiffs’ Motion, the Reply makes clear that the Government and Plaintiffs in fact request that the Court enter the Proposed Order “*if* the Court allows a partial lifting of the PSLRA stay of discovery in this civil action”. (Reply at 1 (emphasis added).)

Although the Government and Plaintiffs’ agreement effectively moots the Government’s motion for a stay of all discovery pursuant to this Court’s inherent power to stay

discovery in the interests of justice, that agreement does not affect the discovery stay mandated by the Private Securities Litigation Reform Act of 1995 (“PSLRA”). *See* 15 U.S.C. § 78u-4(b)(3)(B) (mandating that “all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss”). The PSLRA stay may only be lifted upon a showing that the requested discovery is necessary (1) “to preserve evidence” or (2) “to prevent undue prejudice to that party,” *id.*, and, even then, only if the plaintiff seeks “particularized discovery.” As defendants demonstrated in their respective oppositions to Plaintiffs’ Motion, Plaintiffs have not made these showings. Accordingly, Plaintiffs’ Motion should be denied and the Defendants hereby object to the Proposed Order granting such relief.

Dated: April 20, 2011

Respectfully submitted,

/s/ Jonathan L. Anderson

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CERTIFICATE OF SERVICE

I, Jonathan L. Anderson, hereby certify that on April 20, 2011, I electronically filed *Defendants' Joint Objection to the United States of America and Plaintiffs' [Proposed] Order Granting Plaintiffs' Motion to Partially Lift the PSLRA Discovery Stay* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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